No. 90-95

IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1989

THE PUBLIC UTILITIES COMMISSION OF OHIO, *et al.*,

Petitioners,

v.

CSX TRANSPORTATION, INC., et al.,

Respondents.

Brief of Amici Curiae States of Arizona, California, Louisiana, Missouri, Montana, Nevada, Tennessee, Texas, and Washington, and the National Association of Regulatory Utility Commissioners in Support of Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit and Appendix

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Sixth Circuit erred in preempting rail hazardous materials regulations of the State of Ohio, when Congress expressed its desire for active state involvement in all modes of hazardous materials enforcement, including rail; when the federal government actively encouraged such involvement; and when the states, pursuant thereto, have enforced rail hazardous materials requirements for many years?

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The *amici curiae* states and the *amicus* National Association of Regulatory Utility Commissioners (hereafter "NARUC") pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit issued on April 13, 1990.

STATEMENT OF INTEREST OF AMICI CURIAE

A. Nature of Amici Curiae

The states of Arizona, California, Louisiana, Missouri, Montana, Nevada, Tennessee, Texas, and Washington each regulate common carrier railroads operating within each respective state. In each state, regulatory authority

has been delegated by statute to a regulatory agency. Pursuant to such delegation, each of the *amici curiae* states has adopted and actively enforces rail hazardous materials regulations. (The exceptions are Arizona and California, which are in the process of adopting rail hazardous materials regulations). The appendix to this brief identifies the rules (or statutes when appropriate) for each of the *amici curiae* states.

The NARUC is a quasi-governmental nonprofit organization. Founded in 1889, NARUC membership includes the governmental bodies of the fifty States engaged in the economic and safety regulation of carriers and utilities. The mission of the NARUC is to serve the public interest by seeking to improve the quality and effectiveness of public utility regulation in America. More specifically, the NARUC membership contains the state officials charged with the duty of regulating the safety and services of rail carriers within their respective jurisdictions. These officials have the obligation under state law to assure the maintenance of safe and effective rail carrier service as may be required by the public convenience and necessity, and to ensure that intrastate service is provided at rates and conditions which are just, reasonable and nondiscriminatory for all shippers.

The NARUC's responsibilities are nationwide and involve a broad spectrum of regulatory problems and responsibilities unique to it as an organization. As characterized by Congress, the NARUC is "the national organization of the State Commissions" responsible for economic and safety regulation of the intrastate operation of carriers and utilities. *See*, e.g., 49 U.S.C. § 11506 (c)(1). Moreover, Federal courts have recognized that NARUC is a proper party to represent the collective interest of the state regulatory commissions. *See, e.g., United States v. Southern Motor Carriers Rate Conference*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff'd*, 672 F.2d 469 (5th Cir. 1982), *aff'd en banc*, 702 F.2d 532 (5th Cir. 1983), *rev'd*, 471 U.S. 48 (1985). *See also Indianapolis Power & Light Co. v. ICC*, 687 F.2d 1098 (7th

Cir. 1982); and *Washington Utilities and Transp. Comm'n v. FCC*, 513 F.2d 1142 (9th Cir. 1975).

B. Interest in the Proceedings

The lower court decision invalidated Ohio's railroad hazardous materials regulations on the basis of Federal preemption. Consistent application of this ruling could place in jeopardy rail hazardous materials enforcement programs of the *amici curiae* states, and the regulatory programs of regulatory agencies in other NARUC member states.

C. Importance of the Issue Presented

If the lower court decision is applied in all jurisdictions, a substantial void will have been judicially created in the area of rail hazardous materials enforcement. As discussed in more detail later, for many years and with the support of the federal government, the states have enforced rail hazardous materials regulations that are consistent with federal regulations.

This case is also important because the need for meaningful local regulation cannot seriously be disputed, as hazardous materials transportation poses a serious and mounting public safety threat. For example, in 1974 Congress estimated that 2 billion tons of hazardous materials were being transported annually (all modes), in as many as 250,000 movements a day. S. Rep. No. 1192, 93d Cong., 2d Sess. 7 (1974). Unintentional releases of such materials during transportation had increased 37 percent between fiscal 1972 and fiscal 1973. (1973 - 6,014 incidents; 1972 - 4,400 incidents) *Id.*

In just six years, the amount of hazardous materials transported has increased 100 percent. By 1990, 4 billion tons of hazardous materials were being transported annually, with as many as 500,000 movements a day. H.R. Rep. No. 444, 101st Cong., 2d Sess. 18 (1990).

Unfortunately, in the face of these sobering statistics, the performance of the federal rail hazardous materials program can only be described as deplorable. In 1974, prior to passage of the HMTA, Congress discovered that there

were only *12* Federal Railroad Administration (FRA) track inspectors for 300 million miles of track; 50 FRA inspectors for 1.7 million freight cars and 25,000 locomotives; and FRA freight car inspections had actually *decreased* between 1972 and 1973. S. Rep. No. 1192, 93d Cong., 2d Sess. 14 (1974).

Federal hazardous materials enforcement efforts continue to frustrate Congressional expectations. A report by the General Accounting Office (GAO), RAILROAD SAFETY, DOT SHOULD BETTER MANAGE ITS HAZARDOUS MATERIALS INSPECTION PROGRAM, GAO/RCED-90-43 (November 1989), paints a picture at the federal level of understaffing, lack of review of carrier safety procedures by federal inspectors, maintenance of an inadequate data base, and, in general, a poorly managed rail hazardous materials safety program. Indeed, the Chairman of the House Committee on Energy and Commerce, in summarizing the report found that federal "mismanagement, inefficiency, and a lack of staff resources have deprived the public of adequate protection against the threat of major hazardous materials accidents." H.R. Rep. No. 444, 101st Cong., 2d Sess. 22 (1990).

It is also important to recognize that when rail hazardous materials accidents occur, the results can be catastrophic. A 1974 explosion of a tank car carrying a hazardous material resulted in 2 deaths, 60 injuries, and economic losses of $5 million to $10 million. S. Rep. No. 1192, 93d Cong., 2d Sess. 9 (1974).

It is therefore understandable that the *amici curiae* parties are concerned about preserving their historic role in enforcing rail hazardous materials regulations. For the State of Ohio, that role was wrongfully terminated by the lower court decision.

SUMMARY OF ARGUMENT

Hazardous materials regulation is a matter of national concern. But that national concern must be implemented and enforced at the local level, since it will almost

always be state and local officials that respond to a hazardous materials incident, and who best understand local conditions.

The lower court ignored express statements of Congress that the preemption standard in the HMTA would apply to *all modes* of transportation. The court ignored the substantial federal involvement in the promotion and nurturing of state hazardous materials enforcement programs for all modes of transportation. Moreover, the court misapplied preemption analysis by failing to reconcile the FRSA and the HMTA when such a reconciliation was clearly available, and which would have avoided preemption of the state in an area of strong local interest: public safety and welfare. Finally, the court erroneously and/or improperly applied an implied repeal analysis. The effect of these errors, either singly or collectively, was to create a regulatory void contrary to any rational understanding of Congressional intent.

Congress intended the states to have a role in rail hazardous materials enforcement. The effect of the lower court decision is to deprive Ohio of that role. The Court should grant the petition for a writ of certiorari in order to address the important public safety issues presented in this case.

ARGUMENT

This case involves a determination whether the preemption provision in the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. § 1801 *et seq.*, or the preemption provision in the Federal Railroad Safety Act (FRSA), 45 U.S.C. § 421 et seq. applies to state rail hazardous materials regulations. If the HMTA preemption standard (49 U.S.C. § 1811) is applied, Ohio's regulations consistent with federal regulations are not preempted. If the FRSA preemption standard (45 U.S.C. § 434) is applied, state/federal consistency is irrelevant; Ohio's regulations on the same subject are preempted.

As we discuss below, the lower court erred by failing to apply the HMTA preemption standard to state rail hazardous materials regulations.

A. THE LOWER COURT ERRED BY IGNORING CONGRESS' SPECIFIC INTENT THAT THE HMTA PREEMPTION STANDARD APPLY TO ALL MODES OF TRANSPORTATION

While the lower court correctly observed that the preemption provision of the FRSA was not specifically discussed during the passage of the HMTA, *CSX Transp., Inc. v. Public Utilities Comm'n of Ohio*, 901 F.2d 497, 501 (6th Cir. 1990), it erred in concluding that this meant the FRSA preemption standard applied. Indeed, in its analysis, the court failed to acknowledge the following key facts:

1. In the process of enacting the HMTA, Congress recognized that the preemption provision in Section 1811 of the HMTA "applied to *all modes* of transportation." H.R. Rep. No 1589, 93d Cong., 2d Sess. 25 (1974) (emphasis added). This led to the only exception in Section 1811, which applies to common carrier natural gas pipelines. 49 U.S.C. § 1811(c). Common carrier railroads were *not* excepted.

2. Congress took care to specifically state that transportation subject to regulation under the HMTA meant transportation "by any mode." 49 U.S.C. § 1802(6).

Recognition of these clear statements of legislative intent would not have led the lower court to conclude, as it did, that the removing of hazardous materials regulation from the FRA, and placing it with the DOT, was simply to "consolidate regulation of hazardous material transportation at the Secretarial level* * *" 901 F.2d at 501. On the contrary, the enactment of the HMTA was intended to result in a special regulatory scheme, applicable to all modes of hazardous materials transportation, and accompanied by a special preemption standard. The lower court erred in reaching a conclusion inconsistent with this clear intent of Congress.

B. THE LOWER COURT ERRED BY IGNORING THE SUBSTANTIAL FEDERAL INVOLVEMENT IN STATE RAIL HAZARDOUS MATERIALS ENFORCEMENT

The lower court's opinion is devoid of *any* analysis of the substantial federal involvement in the development of state rail hazardous materials regulations. Such an analysis would have clearly demonstrated repeated and consistent governmental intent that the states have a role in rail hazardous materials regulation.

While not apparent from the lower court's decision, this is not a case in which the federal government has sat by in silence while states have adopted rail hazardous materials regulations. For example, in 1987 the Department of Transportation issued an "Inconsistency Ruling" analyzing rail hazardous materials regulations of the State of Nevada for consistency with federal requirements. Obviously, if these state regulations were preempted, an inconsistency ruling would have been a meaningless exercise. While the DOT found the particular state regulations at issue inconsistent with federal regulations, it emphatically stated that DOT "encourages states to adopt and enforce the [federal hazardous materials regulations] as state regulations." Inconsistency Ruling No. IR-19, *Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials*, 52 Fed. Reg. 24404, 24410 (June 23, 1987) [citation omitted].

This "encouragement" took various other forms. For example, under the State Hazardous Materials Enforcement Development Program (SHMED), the federal government provided funding to the states to encourage adoption of federal rail hazardous materials regulations and development of state enforcement programs.The SHMED program had two goals: 1) decreasing the number of hazardous materials transportation accidents by strengthening State enforcement capabilities, and 2) promoting uniformity in State hazardous materials safety

regulations and enforcement procedures. U.S. CONGRESS, OFFICE OF TECHNOLOGY ASSESSMENT, *TRANSPORTATION OF HAZARDOUS MATERIALS*, OTA-SET-304, at 173 (1986). While emphasis was placed on highway transportation, the report recognized that "***State enforcement activities [were] very important for all modes* * *." *Id.* at 217.

In another report, the federal government recognized its role to "foster uniform nationwide standards concerning hazardous materials" and provide "guidance to the States in adopting the Federal Hazardous Materials Regulations (49 CFR, Parts 100-199)." U.S. DEPARTMENT OF TRANSPORTATION, *STATE HAZARDOUS MATERIALS ENFORCEMENT DEVELOPMENT PROGRAM - OPERATING PLAN* at 5 (April 1981). The referenced CFR Parts contain hazardous materials regulations applicable to all modes, including rail.

These statements were entirely consistent with the concern recognized by Congress that the federal enforcement effort was grossly inadequate and state involvement would be required:

> 1 "* * *noncompliance with existing regulations is the rule rather than the exception in this dangerous business." S. Rep. No. 1192, 93d Cong., 2d Sess. 8 (1974);
>
> 2. Just 2 percent of hazardous materials shipments were being monitored—well under the 10 percent minimum. *Id.*;
>
> 3. The FRA's enforcement record had "not borne out the hope of Congress." *Id.* at 9;
>
> 4. The FRA had only employed 8 inspectors nationwide for hazardous materials enforcement—the House Committee on Interstate and Foreign Commerce "[questioned the FRA's] desire to live up to the intent of Congress." H.R. Rep. No. 1083, 93d Cong., 2d Sess. 7, *reprinted in* 1974 U.S. Code Cong. and Admin. News 7669, 7672-73. This report is noteworthy also for the fact that in a section devoted to "Hazardous Materials in Transportation," only rail issues are discussed. *Id.* at 7675-76.

The lower court ignored these statements of Congressional intent. Moreover, by failing to recognize the substantial involvement of the federal agencies in encouraging state participation in rail hazardous materials regulation, the court failed to apply the principle that the long-standing interpretation of the federal agencies empowered to enforce the federal statute at issue is entitled to great deference. *United States v. Clark*, 454 U.S. 555, 565 (1982). It was error for the lower court to give this matter no consideration whatsoever.

C. THE LOWER COURT ERRED BY IGNORING CONGRESSIONAL INTENT THAT STATES BE ACTIVE PARTICIPANTS IN RAIL HAZARDOUS MATERIALS ENFORCEMENT

Congress created two different enforcement schemes when it enacted the FRSA and then the HMTA. Under the FRSA, once a federal standard is adopted, states are preempted, but are encouraged to participate in enforcing federal standards under state/federal cooperative agreements. *See* 45 U.S.C. § 435. Indeed, in debating the FRSA, Congress early recognized that "[i]t will be the State, the unit closest to the ground, which conducts the investigation, which submits the recommendations, which finds the problem before the disaster strikes." 116 Cong. Rec. 27613 (1970) (Remarks of Rep. Pickle). H.R. Rep. No. 1194, 91st Cong., 2d Sess. 19, *reprinted in* 1970 U.S. Code Cong. and Admin. News 4104, 4117: "* * *the valuable assistance of the States will be very much needed to carry out this act."

Thus, state involvement in enforcement of the FRSA was clearly contemplated under the auspices of state/federal cooperative agreements, whereby states agree to assist the federal government in enforcing *federal* laws and rules. By the same token, state involvement in hazardous materials enforcement was also clearly contemplated by the HMTA, through the requirement that if states adopt hazardous materials standards as *state* law, such stan-

dards must be generally consistent with federal standards. 49 U.S.C. § 1811.

The anomaly created by the lower court is based on the fact that state/federal cooperative agreements *do not apply* to enforcement of hazardous materials regulations, 49 C.F.R. §§ 212, 212.3 (Scope of cooperative agreements does not include hazardous materials) *See also* H.R. Rep. No. 1025, 96th Cong., 2d Sess. 13, *reprinted in* 1980 U.S. Code Cong. and Admin. News 3830, 3837-38. Thus, the lower court's application of the FRSA preemption standard would preclude state enforcement of rail hazardous materials regulations *in any manner*, the express intent of Congress to the contrary notwithstanding.

There is simply no justification for such a regulatory void, and it was error for the lower court to create one.

D. THE LOWER COURT ERRED BY FAILING TO RECONCILE THE STATUTORY SCHEMES, PARTICULARLY WHEN THERE EXISTS A SUBSTANTIAL STATE INTEREST IN LOCAL SAFETY REGULATION

The lower court violated the long-recognized principle that preemption analysis is to be tempered by the conviction that when possible, the court is to reconcile statutes, "rather than holding one completely ousted." *Silver v. New York Stock Exchange*, 373 U.S. 341, 357 (1963). *See also Merrill Lynch, Pierce, Fenner & Smith v. Ware*, 414 U.S. 117, 127 (1973); *Florida Lime Growers, Inc. v. Paul*, 373 U.S. 132, 144 (1963).

The lower court could have easily reconciled the FRSA and HMTA by recognizing that the HMTA established a dual role for the state and federal jurisdictions in the area of hazardous materials regulation for all modes of transportation, including rail. Rules adopted under the FRSA would be subject to the preemption standard in that statute, and rules adopted under the HMTA would be subject to the preemption standard in that statute. In this way, the interest in uniform regulations would have been

preserved. Moreover, to have reconciled the statutes in this way would not only have been consistent with the aforementioned principle of constitutional law, but it would have also recognized the significant and traditional state interest in regulating in the area of local safety and welfare. *See Florida Lime Growers, supra*, 373 U.S. at 144.

The lower court apparently believed that its decision "retains the essential character and purpose of both [the HMTA and the FRSA]," and did not work an ouster of the HMTA. 901 F.2d at 503. On the contrary, the lower court emasculated the role intended for the states in rail hazardous materials regulation. In effect, the lower court amended the HMTA, rendering Section 1811 inapplicable to rail hazardous materials transportation. To do so was error.

E. CASES FROM OTHER JURISDICTIONS EITHER SUPPORT OHIO'S POSITION OR ARE INCONCLUSIVE ON THE ISSUES PRESENTED

The one clear decision covering the issues in this case found that the HMTA preemption standard applied to rail hazardous materials regulations. In *Southern Pacific Transportation Co. v. Public Service Comm'n of Nevada*, No. CV-N-86-444-BRT (D.C. Nev. 1988), *rev'd on other grounds*, No. 88-15541 (9th Cir. July 18, 1990), the district court held that state rail hazardous materials regulations consistent with federal regulations were not preempted. On appeal, the Ninth Circuit agreed with this principle, but reversed on the basis that the specific state regulations at issue were not consistent with federal regulations.

Other cases in the area are less clear. For example, in *Missouri Pacific Railway Co. v. Railroad Comm'n of Texas*, 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd*, 850 F.2d 264 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 794 (1989), the circuit court affirmed a lower court ruling on the basis of preemption under the FRSA, apart from hazardous materials considerations, despite the lower court finding of

inconsistency with HMTA requirements. 850 F.2d at 267-268.

In *Atchison T. & S.F. Ry. Co. v. Illinois Commerce Comm'n*, 453 F. Supp. 920 (N.D. Ill. 1977), the court found the preemption standards in the FRSA and HMTA to be "redundant" and elected to apply the FRSA standard. 453 F. Supp. at 924, n. 7. Nonetheless, the court acknowledged that Illinois could obtain a non-preemption determination under the HMTA. Id. at 926. Illinois currently maintains rail hazardous materials regulations consistent with federal requirements. *See, e.g.*, ILL. ADMIN. CODE tit. 92, CH. I, § 179.

In *CSX Transp., Inc. v. City of Tullahoma*, No. CIV 4-87-47 (E.D. Tenn. Feb. 17, 1988) the court voided a local train speed ordinance. In *dictum*, the court noted that the FRSA preemption standard took priority over the HMTA preemption standard, despite the fact that the train speed ordinance had nothing to do with hazardous materials transportation.

In sum, the cases from other jurisdictions either support Ohio's position *in toto*, would nonetheless allow state hazardous materials standards consistent with federal standards, or had nothing to do with hazardous materials transportation

F. THE LOWER COURT ERRED IN APPLYING AN IMPLIED REPEAL ANALYSIS. BUT EVEN ASSUMING IMPLIED REPEAL ANALYSIS WAS APPROPRIATE, THE COURT ADOPTED AN INCORRECT STANDARD AND THEN MISAPPLIED THAT STANDARD

The lower court erred in considering this to be a case involving an "implied repeal" of the FRSA preemption standard. *See* 901 F.2d at 502. But there was simply no need for Congress to repeal the FRSA standard, either expressly or impliedly: withdrawing FRA authority over the Explosives and Other Dangerous Articles Act, 49 U.S.C. §

1655(f)(3)(A) made the FRSA preemption standard inapplicable, and further amendment unnecessary.

But even assuming, *arguendo*, that an implied repeal analysis was appropriate, the court erred in two significant respects: 1) by implying that Congress did not sufficiently "designate" the FRSA when it enacted the HMTA; and 2) by imposing such a "designation" requirement in the first place. *See* 901 F.2d at 502.

First, Congress *did* designate the FRSA when it withdrew the authority to regulate hazardous materials on a modal basis, by specifically removing the Explosives and Other Dangerous Articles Act, which had been part of the FRSA. 49 U.S.C. § 1655(f)(3)(A). There is simply no basis to conclude that the FRSA preemption provision could be carried in this legislative "baggage," given the specific preemption standard in the HMTA.

Second, even assuming the lower court was correct in stating there was no "designation" of the FRSA in the HMTA, it was error to impose such a requirement in analyzing the implied repeal issue. The Court has held that implied repeal may be evident "from the language *or operation* of a statute* * *" *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 470, *reh'g denied*, 458 U.S. 1133 (1982) (emphasis added). The Court has never imposed a requirement that Congress "designate" a prior law in subsequent legislation, in order for an implied repeal to exist. The lower court erred by doing just that.

CONCLUSION

For the reasons given above, the petition for writ of certiorari filed by the Public Utilities Commission of Ohio should be granted.

Respectfully submitted,

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APPENDIX
AMICI STATES
LAWS AND RULES

Amici State	Agency	Rules (or Statute if Applicable)
Arizona	Arizona Corporation Comm'n	Pending in Docket R-0000-90-166.
California	California Public Utility Comm'n	Pending in Case No. OIR 88-07-039
Louisiana	Louisiana Public Service Comm'n	LA. REV. STAT. ANN. § 32-1504
Missouri	Missouri Division of Transportation, Dept. of Economic Develop.	MO. CODE REGS. tit. 4, § 265-8.120 (Adopts 49 CFR Parts 171-179)
Montana	Montana Public Service Comm'n	MONT. CODE ANN. § 69-14-116
Nevada	Nevada Public Service Comm'n	NEVADAADMIN.CODE Ch. 705, §§ 310-380 (Adopts 49 CFR Parts 171-174)
Tennessee	Tennessee Public Service Comm'n	TENN. COMP.R. & REGS. 1220-3-1-.04 (Adopts 49 CFR Parts 106-189)
Texas	Texas Railroad Comm'n	TEXAS ADMIN. CODE tit. 16, § 5.623 (Adopts 49 CFR Parts 171-179)
Washington	Washington Utilities & Transportation Comm'n	WASH. ADMIN. CODE §480-62-090 (Adopts 49 CFR Parts 171-174, 178-179)

STATUTES INVOLVED

HMTA Preemption Standard, 49 U.S.C.§ 1811:

General

(a) Except as provided in subsection (b) of this section, any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this chapter, or in a regulation issued under this chapter, is preempted.

State laws

(b) Any requirement, of a State or political subdivision thereof, which is not consistent with any requirement set forth in this chapter, or in a regulation issued under this chapter, is not preempted if, upon the application of an appropriate State agency, the Secretary determines, in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this chapter or of regulations issued under this chapter and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

Other federal laws

(c) The provisions of this chapter shall not apply to pipelines which are subject to regulation under the Natural Gas Pipeline Safety Act of 1968 (section 1671 et seq. of this title) or to pipelines which are subject to regulation under Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C.A. § 2001 et seq.) [49 U.S.C. §1811].

FRSA Preemption Standard, 45 U.S.C. § 434:

> The Congress declares that laws, rules, regulations, orders, and standards relating to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order or standard covering the subject matter of such State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation order or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce.

Explosive and Other Dangerous Articles Act, 49 U.S.C. § 1655(f)(3)(A) (repealed 1983):

> The Federal Railroad Administrator shall carry out the functions, powers, and duties of the Secretary pertaining to railroad safety as set forth in the statutes transferred to the Secretary by subsection (e) of this section (other than subsection (e)(4) of this section).

49 U.S.C. § 1655(e)(4) is the section that transfers to the Secretary:

> * * *the following provisions of law relating generally to explosives and other dangerous articles: Sections 831-835 of Title 18.